

UNITED STATES OF AMERICA
Before The
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

\$K'S FOREX INTERNATIONAL, INC.
and ELIZABETH MISKUS KEMP,

Respondents.

)
) **CFTC Docket No. 03-06**
)
) **ORDER INSTITUTING PROCEEDINGS**
) **PURSUANT TO SECTIONS 6(c) AND 6(d)**
) **OF THE COMMODITY EXCHANGE**
) **ACT, MAKING FINDINGS AND**
) **IMPOSING REMEDIAL SANCTIONS**
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I.

INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that \$ K's Forex International, Inc. d/b/a S.K.'s Forex International, Inc. ("SK") and Elizabeth Miskus Kemp ("Kemp") have violated Sections 4(a) and 4b(a) of the Commodity Exchange Act, ("Act"), 7 U.S.C. §§ 6(a) and 6b(a) (1994). Consequently, the Commission deems it appropriate and in the public interest that an administrative proceeding be, and hereby is, instituted to determine whether SK and Kemp have engaged in the violations set forth in this Order, and whether an Order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, SK and Kemp have each submitted an Offer of Settlement ("Offers"), which the Commission has determined to accept. Without admitting or denying the findings in this Order, and prior to any adjudication on the merits, SK and Kemp acknowledge service of this Order. SK and Kemp each consent to the use of the findings in this Order in this or any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ SK and Kemp do not consent to the use of the Offers or this Order, or the findings to which they have consented in their Offers, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. SK and Kemp do not consent to the use of their Offers or this Order, or the findings to which they have consented in their Offers, by any other person or entity in this or any other proceeding. The findings to which SK and Kemp have consented in their Offers, as contained in this Order, are not binding on any other person or entity in any other proceeding.

III.

The Commission finds the following:

A. Summary

From October 1999 through December 2000, SK and Kemp engaged in a fraudulent scheme to solicit and accept slightly in excess of \$400,000 from retail investors for the purpose of engaging in speculative trading of futures on foreign currencies. SK and Kemp attracted customers by means of fraudulent solicitations containing misrepresentations and omissions about the profit and risk of the investments. SK and Kemp used customer funds to enter into transactions that were not consummated on or subject to the rules of a board of trade designated by the Commission as a contract market for such commodities. They also misappropriated customer funds for uses unrelated to commodity futures trading. In order to conceal their misappropriation of these funds, SK and Kemp misrepresented to some investors that their funds had been used to purchase futures contracts when, in fact, those funds were used to pay the business expenses of SK and the personal expenses of Kemp. By these activities, SK and Kemp violated Sections 4(a) and 4b(a)(2) of the Act.

B. RESPONDENTS

1. **\$ K's Forex International, Inc., d/b/a S.K.'s Forex International, Inc.** ("SK") was incorporated in June 1999 in Florida and is an inactive corporation. During the relevant period, SK maintained an office located at 12550 Biscayne Blvd., Suite 608, North Miami Beach, Florida 33181. SK has never been registered with the Commission in any capacity.

2. **Elizabeth Miskus Kemp** ("Kemp") has been President and a principal of SK since April 28, 2000. Between October 1999 and that time, Kemp was the manager of the SK office and was responsible for maintaining the financial and trading records for SK. Kemp resides at 3101 Port Royale Boulevard, Fort Lauderdale, Florida. Kemp has never been registered with the Commission in any capacity.

C. FACTS

SK and Kemp sold or attempted to sell illegal forex futures contracts to members of the general public from October 1999 to December 2000. From October 1999 through April 2000, Kemp was the manager at SK. In that capacity, Kemp was or should have been aware of SK's sale of illegal futures contracts because she managed the financial and trading records of SK and participated in placing customer trades. From April 2000 to December 2000, Kemp, as president of SK, actively participated in the sale of illegal futures contracts by hiring salespersons to solicit customers to buy futures contracts, by controlling all customer funds, and by monitoring customer trades.

SK and Kemp sold forex futures contracts as currency pairs (e.g. US Dollars and British Pounds) in lot sizes of 100,000 units of the base currency (the base currency is the first currency in any pair quoted). The value of a single pip was \$10 for currencies quoted in U.S. Dollars.² SK permitted customers to open accounts with as little as \$4,000. SK salespersons represented to customers that the contracts had no expiration date and that customers could hold a position open indefinitely. Customers were told that they did not need to make or receive physical delivery of the foreign currency in order to close a position, and in fact no customers took delivery. The customers, moreover, did not have the ability to take delivery. Instead, they closed positions by engaging in offsetting trades. As such, physical delivery was not a goal or expectation of the customer. Indeed, SK advised all of its retail customers that their investments were to be used to speculate on the price of foreign currency rather than to take delivery of foreign currency. Those transactions for customers were conducted on a board of trade that had not been designated by the Commission as a contract market for such commodities.

SK, Kemp, and salespersons under their control fraudulently solicited customers by stating that they were offering investors an opportunity to make large profits on the rise in the value of foreign currencies relative to the dollar in a very short period of time. They claimed that they would double a customer's investment in less than a month and that SK had customers who had invested hundreds of thousands and had more than doubled their investment. In addition, they represented that SK had expert foreign currency market analysts who were highly successful traders. They also assured customers that their investments could only sustain minimal losses because they used stop/loss orders.

As the result of the their fraudulent solicitations, individuals in various parts of the United States sent funds to SK totaling \$407,666 between October 1999 and September 2000. Those funds were deposited in a customer account in the name of SK at City National Bank in Hollywood, Florida ("SK Customer Account").

Between April and December 2000 when Kemp was president of SK, Kemp was the signatory on the SK Customer Account. She was also a signatory on an operations account in the name of SK at City National Bank ("SK Operations Account"). During that time, SK and Kemp misappropriated customer funds. After receiving customer funds, Kemp directed the transfer of funds from the SK Customer Account to another foreign currency entity. She then caused the transfer of those customer funds to the SK Operations Account. Kemp also directed the transfer of funds from the SK Customer Account directly to the SK Operations Account. Although the customer funds were to have been used for the purpose of trading futures on foreign currency, Kemp misappropriated those funds by to pay for SK business expenses and her own personal expenses.

In order to conceal their misappropriation of customer funds, SK and Kemp stated to customers that foreign currency positions had been purchased on their behalf when, in fact, no

² A pip refers to the last significant decimal place used for price negotiations and in currency transactions, is usually equivalent to one ten-thousandth. For example, a price change from 43.6750 to 43.6755 involves a change of five pips.

positions had been purchased. SK produced fictitious account statements for customers to support these false representations.

D. LEGAL DISCUSSION

1. Respondents Offered Illegal Foreign Currency Futures Contracts In Violation Of Section 4(a) Of The Act

Section 4(a) of the Act makes it unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery unless (1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a contract market for such commodity, (2) such contract is executed or consummated by or through a member of such contract market; and (3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its prices and the terms of delivery.

When determining whether the foreign currency contracts marketed by the respondents are futures contracts, "[t]he transaction must be viewed as a whole with a critical eye toward its underlying purpose." *CFTC v. Co Petro Mkg. Group, Inc.*, 680 F.2d 573, 581 (9th Cir. 1982), *relied upon in Motzek v. Monex Int'l. Ltd.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,095 at 41,626 (CFTC June 1, 1994) (endorsing a holistic approach). Futures contracts are contracts for the purchase or sale of a commodity for delivery in the future at a price established when the contract is initiated, with both parties to the transaction obligated to fulfill the contract at the specified price. The contracts are entered into principally to assume or shift price risk without transferring the underlying commodity. Although the contracts provide for settlement by delivery, delivery can be avoided by offset, cash settlement or cancellation. *See CFTC v. Noble Metals Int'l.*, 67 F.3d 766, 772 (9th Cir. 1995) (futures contracts provide that a specific quantity at a specific price will be 'delivered' to the buyer at a specific date, and allow the purchaser to enter into offsetting transactions as means to avoid taking delivery); *CFTC v. Hanover Trading Corp.*, 34 F. Supp.2d 203, 205 (S.D.N.Y. 1999) (the lack of an expectation that delivery of the physical commodity will be made is an important factor indicating the presence of a futures contract); *In re Stovall* [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 at 23,777 (CFTC Dec. 6, 1979); *CFTC v. Co Petro*, 680 F.2d 573, 581 (9th Cir. 1982) (contracts were "speculative ventures" that were "marketed to those for whom delivery was not an expectation," and therefore futures contracts).

The foreign currency contracts offered and sold by SK and Kemp exhibited the characteristics of futures contracts. The contracts involved the purchase and sale of foreign currency for future delivery, and customers entered into contracts at a price determined at the time the customers entered into the contract. All the terms and the conditions of the contracts were standardized. Through these contracts, customers captured price movements and speculated on fluctuations in the value of the currencies without transferring the underlying currency. SK and Kemp specifically told customers that the contracts were entered into solely to speculate on price movement, that no delivery would be made, and that the contracts could be

offset without any time limitations. The customers, moreover, did not have the ability to take delivery. Ultimately, the contracts were settled by offsetting transactions, and never resulted in delivery. The foreign currency contracts that SK and Kemp offered were therefore commodity futures contracts. *CFTC v. Noble Wealth Data Info. Servcs*, 90 F. Supp. 2d 676, 688 (D. Md. 2000) (foreign currency contracts that were for future delivery, could be satisfied by offset or other means to avoid delivery, with prices that were set at the time the contract was entered into, and that were engaged in primarily to speculate, were futures contracts); *accord CFTC v. Hanover Trading Corp.*, 34 F. Supp. 2d at 205.

SK and Kemp offered illegal foreign currency futures contracts to the retail public that were not conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market for such commodities. Accordingly, they violated Section 4(a) of the Act, 7 U.S.C. § 6(a).

2. Respondents Committed Solicitation Fraud And Misappropriated Customer Funds In Violation of Section 4b(a) of the Act

Section 4b(a) of the Act prohibits all manner of omissions and misrepresentations of material fact regarding futures transactions, including misrepresentations concerning the likelihood of profit and the risk of loss, the issuance of false trading reports, misappropriation of customer funds, and other matters that a reasonable investor would consider material to his investment decision. *See, e.g., JCC, Inc., et al. v. CFTC*, 63 F.3d 1557, 1571 (11th Cir. 1995) (misrepresentations concerning the likelihood of profits and risk of loss); *Saxe v. E.F. Hutton & Co., Inc.*, 789 F.2d 110-11 (2nd Cir. 1986) (to the same effect); *CFTC v. U.S. Metals Depository Co.*, 468 F. Supp. 1149, 1161 (S.D.N.Y. 1979) (“glowing” representations concerning market expectations and likelihood of profit misrepresentations regarding profitability of investment).

Liability for solicitation fraud is established when a person or entity is found to have made misleading statements of, or omitted to disclose, material facts with *scienter*. *See also Hammond v. Smith Barney, Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657-36,659 (CFTC March 1, 1990) (*scienter* is a necessary element to establish futures fraud). *Scienter* requires proof that the respondent committed the alleged wrongful acts “intentionally or with reckless disregard for his duties under the Act.” *Hammond, supra*, at 36,659.

Further, misappropriation of investor funds with *scienter* also violates Section 4b(a) of the Act. *CFTC ex rel Kelley v. Skorupskas*, 605 F.Supp. 923, 932 (E.D. Mich. 1985) (pool operator who disbursed customer funds to other investors, herself and her family committed fraud); *CFTC v. Morse*, 762 F.2d 60, 62 (8th Cir. 1985) (defendant who used customer funds for personal use committed fraud); *In re Clancy*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,126 at 24,563 (CFTC (Nov. 25, 1980) (respondent violated antifraud provisions when he converted customer funds to own use).

SK and Kemp, individually and through their salespersons, defrauded customers by knowingly or recklessly making material misrepresentations. During the course of their

solicitations, they assured customers of large profits and, on more than one occasion, specifically guaranteed a profitable return. They also minimized the risk of loss by representing that the use of stop/loss orders would provide an assurance of minimal loss in the event of a down turn in market conditions. After receiving customer funds for the purpose of purchasing futures on foreign currency, SK and Kemp continued their fraudulent practices by misappropriating some of those funds to their own use and generating false account statements showing fictitious trading to hide the misappropriation. Accordingly, SK and Kemp violated Section 4b(a) of the Act, 7 U.S.C. § 6b(a).

IV. OFFER OF SETTLEMENT

SK and Kemp have each submitted an Offer of Settlement in which, without admitting or denying the findings herein, they admit the jurisdiction of the Commission with respect to the matters set forth in this Order and acknowledge that failure to comply with the Order shall constitute a violation of the Order and may subject them to injunctive or administrative proceedings under the Act. SK and Kemp each waive the filing and service of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offers, any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, and all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1, *et seq.*, relating to, or arising from this action.

SK and Kemp stipulate that the record basis on which this Order is entered consists solely of the findings in this Order, the entry of which they have consented to in their Offers. SK and Kemp each consent to the Commission's issuance of this Order, which makes findings, as set forth herein, and orders that: (1) SK and Kemp each cease and desist from violating Sections 4(a) and 4b(a) of the Act; (2) SK and Kemp are subject to a permanent trading ban; (3) SK and Kemp are jointly and severally liable to pay a contingent civil monetary penalty in an amount of two hundred twenty thousand dollars (\$220,000) pursuant to a ten-year payment plan as provided below; and (4) SK and Kemp shall comply with their undertakings as set forth in their Offers and incorporated in this Order including: (a) never to apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Regulation 4.14(a)(9), and never to engage in any activity requiring registration or exemption from registration, unless such exemption is pursuant to Regulation 4.14(a)(9); (b) never to act in any capacity or affiliate in any way with any individual or entity which involves the solicitation, acceptance of orders, transmission of orders, execution, advice related to futures or options trading; (c) never to take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding or conclusion in this Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; (d) to cooperate fully with the monitoring of their payment obligations under this Order; and (e) never to transfer assets to family members or other persons to avoid their payment obligations under this Order.

V.

FINDING OF VIOLATIONS

Solely on the basis of the consents of SK and Kemp as evidenced by their Offers, and prior to any adjudication on the merits, the Commission finds that SK and Kemp violated Sections 4(a) and 4b(a) of the Act, 7 U.S.C. §§ 6(a), 6b(a).

VI.

ORDER

Based on the consents of SK and Kemp to the entry of this Order and the findings herein that SK and Kemp violated Sections 4(a) and 4b(a) of the Act, the Commission deems it appropriate and in the public interest to impose remedial sanctions against SK and Kemp, and accordingly:

- A. **IT IS HEREBY ORDERED** that SK and Kemp shall cease and desist from violating Sections 4(a) and 4b(a) of the Act; 7 U.S.C. §§ 6(a), 6b(a).
- B. **IT IS HEREBY FURTHER ORDERED** that SK and Kemp are prohibited from trading on or subject to the rules of any registered entity and all registered entities shall refuse SK and Kemp all privileges thereon.
- C. **IT IS HEREBY FURTHER ORDERED** that SK and Kemp, jointly and severally, shall pay a contingent civil monetary penalty in the amount of up to two hundred twenty thousand dollars (\$220,000) pursuant to the following terms and conditions:
 - 1. Kemp and SK shall make an annual civil monetary penalty payment ("Annual CMP Payment"), as directed by a monitor designated by the Commission ("the Monitor"), for the period January 1, 2002 through December 31, 2011 (or until the CMP is paid in full). Kemp and SK shall make each Annual CMP payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, under cover of a letter that identifies Kemp and SK and the name and docket number of the proceeding; Kemp and SK shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, DC 20581.
 - 2. Kemp and SK shall make an Annual CMP Payment according to the payment plan outlined in Section IV, paragraph A, below, to an account designated by the Monitor of: a percentage of their adjusted gross income (as defined by the Internal

Revenue Code) earned or received by them during the previous calendar year, plus (2) all other cash receipts, cash entitlements or proceeds of non-cash assets received by them during the previous calendar year. The ten-year payment period shall run from January 1, 2002 through December 31, 2011. The Annual CMP Payment shall be made on or before July 31 of each calendar year, starting in calendar year 2003 and continuing for ten years or until the CMP amount is paid in full from any source, whichever occurs sooner. CMP payments for a calendar year shall take place by July 31 of the following year. Therefore, the final CMP payment for the year 2011 will occur on or before July 31, 2012.

3. Kemp and SK agree that the National Futures Association is hereby designated as the Monitor commencing January 1, 2003. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq., Executive Vice President, Chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606.
4. Kemp and SK shall provide a sworn financial statement to the Monitor on June 30 and December 31 of each calendar year, starting December 30, 2002 and continuing through and including December 31, 2011. The financial statement shall provide: (i) a true and complete itemization of all of their actual or claimed rights, title and interest in any asset, wherever, however and by whomever held; (ii) an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of them over the preceding six-month interval; and (iii) a detailed description of the source and amount of all their income or earnings, however generated. Kemp and SK shall also provide the Monitor with complete copies of their signed federal income tax returns, including all schedules and attachments thereto (e.g., IRS Forms W-2 and Forms 1099), as well as any filings they are required to submit to any state tax or revenue authority, on or before June 30 of each calendar year, or as soon thereafter, beginning in 2003 and ending in 2012. If Kemp moves her residence at any time, she shall provide written notice of her new address to the Monitor and the Commission within ten calendar (10) days thereof.
5. If, during the same time period, Kemp elects to file a joint tax return, she shall provide all documents called for by this paragraph 2, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of Kemp's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that Kemp has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% of the deductions that Kemp is entitled to claim on the joint tax return; provided however that Kemp may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely hers. Such individual tax return shall include all schedules and attachments thereto

(e.g., IRS Forms W-2 and Forms 1099), as well as any filing required to be submitted to any state tax or revenue authority.

6. Based on the information contained in Kemp and SK's tax returns, sworn Financial Disclosures Statement and other financial records provided to the Commission, the Monitor shall calculate the Annual CMP Payment to be paid by Kemp and SK for that year. On or before June 30 of each year and starting in calendar year 2003, the Monitor shall send written notice to Kemp and SK with instructions to pay the Annual CMP Payment on or before July 31 of that year to an account designated by the Monitor.

7. The Annual CMP Payment shall be calculated as follows:

a. Where Adjusted Gross

Income Plus Net Cash Receipts Total:	Percent of total to be paid by Kemp and SK is:
Under \$25,000	0%
\$25,000 up to and including \$50,000	20% of the amount between \$25,000 and \$50,000
\$50,000 up to and including \$100,000	\$5,000 (20% of \$25,000) plus 30% of the amount between \$50,000 and \$100,000
Above \$100,000	\$20,000 (20% of \$25,000 plus 30% of 50,000) plus 40% of the amount above \$100,000

b. Kemp and SK shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all duties with respect to the civil monetary penalty payments. Kemp and SK will cooperate fully with the Monitor and the Commission in explaining their financial income and earnings, status of assets, financial statements, asset transfers and tax returns, and shall provide any information as may be required by the Commission and/or the Monitor. Furthermore, Kemp and SK shall provide such additional information and documents with respect thereto as may be requested by the Commission and/or the Monitor.

c. In the event that SK and Kemp do not make payments as directed in paragraph C, above, the Commission may bring a proceeding or an action to enforce compliance with this Order and at its option may seek payment

of the unpaid Annual CMP payment(s) or immediate payment of the entire amount of the civil monetary penalty required by paragraph C. The only issue SK and Kemp may raise in defense of such enforcement action is whether they have made the Annual CMP Payment(s) as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual CMP Payments, due and owing pursuant to paragraph C, above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual CMP Payments made by SK and Kemp, shall not be deemed a waiver of their obligation to make further payments pursuant to the payment plan, or a waiver of the Commission's right to seek to compel payment of the remaining balance of the civil monetary penalty assessed against SK and Kemp.

- d. The Commission notes that an order requiring immediate payment of the civil monetary penalty against SK and Kemp would be appropriate in this case, but does not impose it based upon SK and Kemp's financial condition. SK and Kemp acknowledge that the Commission's acceptance of the Offer is conditioned upon the accuracy and completeness of the sworn Financial Statements SK and Kemp have provided regarding their financial condition. SK and Kemp consent that if at any time following entry of this Order the Division of Enforcement ("Division") of the Commission obtains information indicating that SK and Kemp's representations concerning their financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect at the time they were made, the Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether SK and Kemp provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of the civil monetary penalty required in paragraph C above; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if the Offers of SK and Kemp had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by SK and Kemp was fraudulent, misleading, inaccurate or incomplete in any material respect, and whether any additional remedies should be imposed. SK and Kemp may not, by way of defense to any such petition concerning the financial information provided by them, contest the validity of or, or the findings in, this Order, assert that payment of a civil monetary penalty should not be ordered, or contest the amount of the civil monetary penalty to be paid. If in such proceeding, the Division petitions for, and the Commission orders, immediate payment of less than the full amount of the civil monetary penalty, such petition shall not be deemed a waiver of SK and Kemp's obligation to pay the remaining balance of the civil monetary penalty assessed against them pursuant to the payment plan.

D. IT IS HEREBY FURTHER ORDERED that SK and Kemp shall comply with the following undertakings:

1. SK and Kemp shall not take any action or make any public statement denying, directly or indirectly, any finding in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision effects SK or Kemp's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party;
2. SK and Kemp shall not engage in, control, or participate in any manner in the solicitation, trading, transmission or execution of commodity futures contracts, options on commodity futures contracts, or options on foreign currency as a counterparty or for or on behalf of any person or entity.
3. SK and Kemp shall not apply for registration, seek exemption from registration, engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, or act in any capacity or affiliate in any way with any individual or entity that is registered, is required to be registered, or is exempt from registration with the Commission, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, or is acting in any capacity requiring registration with the Commission or exempt from registration, except as provided in Section 4.14(a)(9) of the Commission's Regulations.
4. SK and Kemp shall cooperate fully and expeditiously with the Monitor and the Commission in carrying out all aspects of the Annual Payment Plan. They shall cooperate fully with the Monitor and the Commission, including providing sworn testimony, in explaining their financial income and earnings, status of assets, financial statements, asset transfers, tax returns, and shall provide any information concerning herself as may be required by the Commission. Furthermore, SK and Kemp shall provide such additional information and documents with respect thereto as may be requested by the Monitor or the Commission.
5. Kemp shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any member of the Kemp family or any other person for the purpose of concealing such funds or property from the Monitor or the Commission.

Unless otherwise specified, the provisions of this Order shall be effective on this date.

Dated: January 6, 2003

BY THE COMMISSION

Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission